

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

Before the Insurance Administrator
Department of Consumer and Business Services

In the Matter of Adopting OAR)	
836-100-0105, 836-100-0110, 836-100-0115, and)	SUMMARY OF TESTIMONY
Relating to Adoption of the Oregon Companion)	AND HEARING OFFICER'S
Guide for the Implementation of the EDI)	RECOMMENDATION
Transaction for Health Care Claims: Institutional,)	
Professional and Dental (837))	

Procedures Followed

On August 10, 2011, the Director filed with the Secretary of State a Notice of Proposed Rulemaking Hearing (Notice), giving notice that the Director proposed to adopt the second in a series of “companion guides” that will further the goal of administrative standardization and simplification in health care transactions as envisioned in chapter 130, Oregon Laws 2011 (Enrolled Senate Bill 514) (SB 514). This rulemaking will actually adopt three related guides: 1) the “Oregon Companion Guide for the Implementation of the EDI Transaction: ASC X12/005010X222 Health Care Claim: Professional (837);” 2) “The Oregon Companion Guide for the Implementation of the EDI Transaction: ASC X12/005010X223 Health Care Claim: Institutional (837);” and 3) the “Oregon Companion Guide for the Implementation of the EDI Transaction: ASC X12/005010X224 Health Care Claim: Dental (837).”

These guides were developed under a process first set forth in Sections 1192 and 1193, Chapter 595, Oregon Laws 2009, which was replaced by and expanded under chapter 130, Oregon Laws 2011 (Enrolled Senate Bill 514) (SB 514). Under both laws, the Department of Consumer and Business Services is required to adopt these standards by rule.

In addition to adoption of the companion guides, these rules propose to add a new waiver as recommended by the Oregon Office of Health Policy and Research and the Oregon Health Leadership Council. This provision would grant a waiver and deem a plan in compliance with the Oregon standards if the plan is certified by the Council for Affordable Quality Healthcare’s (CAQH) Committee on Operating Rules for Information Exchange (CORE). This waiver recognizes that because the Oregon Companion Guides have been developed in alignment with CORE and CORE is now recognized by federal agencies as the national standard, meeting either the CORE or the Companion Guide standard will allow for standardization. The rules also clarify that “health care entity” does not include a pharmacy or a pharmacy benefits manager, thus exempting these entities from the requirements of the rules.

The Notice announced that a rulemaking hearing would be held on September 26, 2011, and that interested persons could submit comments through October 3, 2011. The notice was filed with a

Statement of Need and Fiscal Impact which included a Statement of Statutory Authority, Need for Action, Advisory Committee, Principal Documents Relied Upon and Fiscal and Economic Impact. A copy of the Notice was published in the Secretary of State's Oregon Bulletin of September 2011. Copies of the Statement of Need and Fiscal Impact and the Notice of Proposed Rulemaking were delivered or mailed to Oregon health insurers and other health care entities, to persons on the Division mailing list established under the Administrative Procedures Act, to legislators who are required by law to be notified, and to the press and to other interested persons. Copies were also made available to interested persons through the Division's e-notify system and were posted on the Division's web site.

The process used to develop this Companion Guide was a collaborative effort with involvement of over 35 different organizations including health plans, associations, providers, state agencies and clearinghouses.

The requirements of the new companion guides adopted by reference in this rulemaking, and as set forth in OAR 836-100-0110 as amended will apply on October 1, 2012 for those health care providers that conduct claims or encounter transactions electronically on the effective date of these rules and January 1, 2013, for all claims and encounter transactions from all health care providers.

The hearing officer recommends adoption of the rule with one change to the rules as proposed. This recommended change is in response to comments received and will exclude pharmacies and pharmacy benefits managers from the administrative simplification requirements.

Fiscal impact: The advisory committee reviewed the proposed fiscal impact statement for these rules. There will be a fiscal impact for health insurers and other health care entities that must come into compliance with the requirements of the Companion Guide. The Office of Oregon Health Policy and Research examined the costs and benefits of implementing all of the companion guides. For the state agencies, there will be a minimal fiscal impact, which can be absorbed by the agencies. For insurers and other entities, and providers, there should be a small impact in the short term and potentially substantial cost-savings in the long-term as administrative simplification streamlines processes.

Certain small providers may be impacted, though it is difficult to estimate how many. Providers currently unable or unwilling to interact with health insurers or health care entities in the manner provided by the rules will have over a year after enactment of the rule to come into compliance. Moreover, there are multiple options for developing a compliant electronic process, including one that requires only an internet connection to implement. Finally, the costs to providers associated with this rulemaking are only attributable to the rule insofar as the rule is implementing the final outcome of a process created by statute: these costs cannot be avoided by forgoing rulemaking because the department is required to adopt the rule in this instance.

The Oregon Health Authority, having studied the costs and efficiencies of interoperable electronic health record systems in solo and small group practices, estimates that the median cost for initial implementation will be \$45,747, with an ongoing median annual cost of \$7,231. This is offset by a median annual efficiency and revenue savings of \$38,450 including a median annual savings from transactions of \$10,800. OHA expects that even those providers who do not recoup their initial costs in the first year of operation will likely do so in the second. This is the best information currently available.

Over the long term, the standardization enforced by this rule should bring down administrative costs and speed delivery of information, claims payments, and ultimately health care services.

Members of the advisory committee reviewed the fiscal impact and agreed that there would be an initial expense. They were unsure whether the projected cost savings will be realized.

Testimony Received and Hearing Officer Recommendation

The hearing was held as scheduled. Jeannette Holman, Senior Policy Analyst was the hearing officer. No members of the public testified at the hearing. We received written comments from Mr. Neal Baker on behalf of CVS Caremark. Mr. Baker requested that pharmacies and pharmacy benefits managers be granted a waiver if the entity complied with the National Council for Prescription Drug Programs (NCPDP) systems. After discussing this request internally and upon the recommendation of representatives of the Oregon Health Authority, the hearing officer recommends that the rules be adopted with a change that simply exempts pharmacies and pharmacy benefits managers from the scope of the administrative simplification rules and the requirements to comply with the Oregon Companion Guides. In the course of discussing the companion guides, the Oregon Health Leadership Council has never discussed including pharmacies and pharmacy benefits managers.

To exempt these entities, the definition of “health care entity” in OAR 836-100-0105 has been restructured to clarify that “health care entity” does not include a pharmacy or a pharmacy benefits manager.

The hearing officer recommends that the proposed rules be adopted with this change.

The rulemaking was reviewed again for its economic effect on businesses, including small businesses, and there is no need for further change. The rulemaking is within the Director's rulemaking authority, and applicable rulemaking procedures were complied with.

Signed this 25th day of October 2011.

Department of Consumer and Business Services

/s/

Jeannette Holman, Hearing Officer

This Summary and Recommendation are reviewed and adopted.

Signed this 28th day of October 2011.

Department of Consumer and Business Services

/s/

Teresa Miller, Deputy Insurance Administrator